

STATE OF WISCONSIN
TAX APPEALS COMMISSION

CHARLES JOECKS

DOCKET NO. 20-I-234-SC

Petitioner,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER

ELIZABETH KESSLER, CHAIR:

Respondent filed a Motion for Summary Judgment alleging that Petitioner has failed to state a claim upon which relief can be granted. The Petitioner, Charles Joecks, appears *pro se*. The Respondent, the Wisconsin Department of Revenue, is represented by Attorney Nicole Kuehl. The Department filed briefs and affidavits with exhibits in support of its Motion. Petitioner filed multiple responses to the Department's motion.

The Department argues that there is no genuine issue of material fact in dispute, pursuant to Wis. Stat. § 802.08, as Petitioner has admitted in multiple written communications to the Department that he does not dispute the amount of tax owed.

The Department's Motion for Summary Judgment as to the lack of a genuine issue of material fact is granted.

FACTS

1. In 2016, Charles Joecks took an early withdrawal from his 401(k) account. (Joecks Petition, ¶ 2.)
2. Mr. Joecks claims he was told that state and federal taxes would be withheld from the distribution. (Joecks Petition, ¶ 2.)
3. Mr. Joecks claims he did not receive a 1099 or other form from the financial institution that previously managed his 401(k) indicating the withdrawal or any taxes withheld. (Joecks Petition, ¶ 2.)
4. On April 4, 2017, Mr. Joecks timely e-filed his 2016 Wisconsin individual income tax return. (Affidavit of Alexander K. Hans, "Hans Aff." ¶ 2.)
5. On November 26, 2019, the Wisconsin Department of Revenue received information from the IRS that additional amounts of income should have been reported on Petitioner's 2016 Wisconsin individual income tax return. (Hans Aff. ¶ 3.)
6. The Wisconsin Department of Revenue reviewed Petitioner's account and found unreported retirement income. On or about July 20, 2020, the Department issued Charles Joecks a Notice of Office Audit Amount Due for an audit period covering the calendar year of 2016. (Hans Aff. Ex. 1.)
7. The original tax due was \$560.00. Interest charges amounting to \$221.58 and a penalty amounting to \$248.00 were also listed on the Notice of Office Audit Amount Due, for a total due of \$1029.58. (Hans Aff., Ex. 1.)
8. Petitioner has declared in writing, both to the Commission and the Department, that he withdrew funds from his retirement account in 2016, and that he

understands his responsibility to pay the taxes owed. (Commission file; Affidavit of Dana J. Erlandsen ("Erlandsen Aff.") ¶¶ 3-4 and Ex. 1.)

9. Petitioner disputes the penalty and interest charges added to his original tax due. (Commission file; Erlandsen Aff. ¶ 2, Ex. 1.)

APPLICABLE LAW

In order to grant a Motion for Summary Judgment, there must be no genuine issue of material fact. A motion for summary judgment will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Wis. Stat. § 802.08(2).

In this case, there are no genuine issues of material fact. Mr. Joecks withdrew money from his retirement account in 2016 and did not pay Wisconsin individual income taxes on that income.

APPLICABLE STATUTES

Wis. Stat. § 71.77(2). With respect to assessments of a tax or an assessment to recover all or part of any tax credit under this chapter in any calendar year or corresponding fiscal year, notice shall be given within 4 years of the date the income tax or franchise tax return was filed.

Wis. Stat. § 71.82(1)(a). In assessing taxes interest shall be added to such taxes at 12 percent per year from the date on which such taxes if originally assessed would have become delinquent if unpaid, to the date on which such taxes when subsequently assessed will become delinquent if unpaid.

Wis. Stat. § 71.83(1)(a)(6). 'Retirement plans.' Any natural person who is liable for a penalty for federal income tax purposes... is liable for 33 percent of the federal penalty.... The

penalties provided under this subdivision shall be assessed, levied, and collected in the same manner as income or franchise taxes.

ANALYSIS

Wisconsin caselaw has indicated that neither the Department nor the Tax Appeals Commission has the authority to waive the statutory interest. *Worley v Department of Revenue*, Wis. Tax Rep (CCH) ¶ 202-571 (1985) (“Interest and late charges imposed by respondent are mandatory under Chapter 71 of the Wisconsin Statutes and are not reviewable by this Commission.”)

While we are sympathetic to Petitioner’s frustration, the failure of his previous retirement account company to withhold State of Wisconsin taxes and to provide him with a 1099 do not absolve him of responsibility to pay the penalties and taxes owed on such income.

CONCLUSIONS OF LAW

1. The Wisconsin Department of Revenue conducted the Office Audit during July 2020, less than four years after Petitioner filed his 2016 individual tax return. This was within a timely manner under Wis. Stat. § 71.77(2).

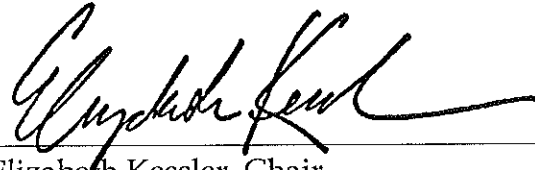
2. The Tax Appeals Commission lacks the authority to waive the interest and penalties imposed by the statutes in this matter.

ORDER

The Department’s Motion for Summary Judgment as to the lack of a genuine issue of material fact is granted.

Dated at Madison, Wisconsin, this 12th of April, 2021.

WISCONSIN TAX APPEALS COMMISSION

A handwritten signature in black ink, appearing to read "Elizabeth Kessler", written over a horizontal line.

Elizabeth Kessler, Chair

WISCONSIN TAX APPEALS COMMISSION
5005 University Avenue - Suite 110
Madison, Wisconsin 53705

NOTICE OF APPEAL INFORMATION

NOTICE OF RIGHTS FOR REHEARING, OR JUDICIAL REVIEW, THE TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS RESPONDENT

A taxpayer has two options after receiving a Commission final decision:

Option 1: PETITION FOR REHEARING BEFORE THE COMMISSION

The taxpayer has a right to petition for a rehearing of a final decision within 20 days of the service of this decision, as provided in Wis. Stat. § 227.49. The 20-day period commences the day after personal service on the taxpayer or on the date the Commission issued its original decision to the taxpayer. The petition for rehearing should be filed with the Tax Appeals Commission and served upon the other party (which usually is the Department of Revenue). The Petition for Rehearing can be served either in-person, by USPS, or by courier; however, the filing must arrive at the Commission within the 20-day timeframe of the order to be accepted. Alternately, the taxpayer can appeal this decision directly to circuit court through the filing of a petition for judicial review. It is not necessary to petition for a rehearing first.

AND/OR

Option 2: PETITION FOR JUDICIAL REVIEW

Wis. Stat. § 227.53 provides for judicial review of a final decision. Several points about starting a case:

1. The petition must be filed in the appropriate county circuit court and served upon the Tax Appeal Commission and the other party (which usually is the Department of Revenue) either in-person, by certified mail, or by courier, within 30 days of this decision if there has been no petition for rehearing or, within 30 days of service of the order that decides a timely petition for rehearing.
2. If a party files a late petition for rehearing, the 30-day period for judicial review starts on the date the Commission issued its original decision to the taxpayer.
3. The 30-day period starts the day after personal service, or the day we mail the decision.
4. The petition for judicial review should name the other party (which is usually the Department of Revenue) as the Respondent, but not the Commission, which is not a party.

For more information about the other requirements for commencing an appeal to the circuit court, you may wish to contact the clerk of the appropriate circuit court or, the Wisconsin Statutes. The website for the courts is <https://wicourts.gov>.

This notice is part of the decision and incorporated therein.